Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules	)	GN Docket No. 11-117
	)	
Wireless E911 Location Accuracy Requirements	)	PS Docket No. 07-114
	)	
E911 Requirements for IP-Enabled Service Providers	)	WC Docket No. 05-196
	)	

COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL

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The Information Technology Industry Council ("ITI") hereby files these comments in response to the Second Further Notice of Proposed Rulemaking and the Notice of Proposed Rulemaking ("*NPRM*" or "*Notice*") in the above-captioned proceedings.[1]

ITI represents over 40 of the nation's leading information technology companies, including computer hardware and software, Internet services, and wireline and wireless networking companies.[2] ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, protect consumer choice, and enhance

[1] *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules; Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking, GN Docket No. 11-117, PS Docket No. 07-114, WC Docket No. 05-196, FCC 11-107 (rel. July 13, 2011).

[2] For more information on ITI, including a list of its members, please visit http://www.itic.org/about-iti/about-iti/.

global competition.

I. INTRODUCTION AND SUMMARY

ITI supports the Commission's efforts to ensure that the public has the ability to contact emergency services personnel and that such personnel have accurate information regarding the location of the caller, and welcomes the opportunity to provide comments on the issues raised in the *Notice*. ITI's members are at the forefront of developing and manufacturing the technologies and devices that are bringing cutting edge communications technologies, including interconnected Voice over Internet Protocol (VoIP) services, to the American public. ITI believes that the existing Commission rules establishing emergency calling requirements to providers of interconnected VoIP have been successful at providing consumers with access to emergency calling capability, and that this success is at least partly attributable to the absence of any Commission-imposed E911 technology mandate, which allowed interconnected VoIP providers the technological flexibility needed to innovate and deliver E911 to their consumers.

The Commission should not expand E911 requirements to IP-enabled applications and products where those products are not designed to be a replacement for telephone service. In adopting the existing definition of "interconnected VoIP", the Commission drew a distinction between services for which customers have a reasonable expectation of emergency calling capability, and IP-enabled applications and products that do not. The *Notice* does not provide adequate justification for upsetting settled consumer expectations with respect to emergency calling capability. In particular, the one-way, outbound-only VoIP products discussed in the *Notice* are not replacement telephone services and do not

give rise to a reasonable consumer expectation of emergency calling capability. In light of the above, changes to the definition of "interconnected VoIP" and the services subject to emergency calling requirements are premature and would lead to confusion, which could end up hurting the Commission's goal of ensuring that consumers have access to E911 and public safety personnel have accurate location information from 911 callers.

ITI also urges the Commission not to impose technological mandates with respect to automatic location requirements for services such as nomadic VoIP where such solutions are technically infeasible. Moreover, the Commission should continue to work toward a Next Generation 911 ("NG911") network rather than diverting time, energy, and resources toward requiring IP-based providers to comply with legacy rules and tailor solutions to legacy emergency calling infrastructure. ITI's members — whose expertise is geared more toward an NG911 network than the legacy, narrowband E911 network — stand ready to work with the Commission and other stakeholders to develop NG911 standards that are realistic, feasible, and effective.

II. THE STANDARD FOR DETERMINING WHETHER EMERGENCY CALLING REQUIREMENTS ARE TO BE IMPOSED ON A SERVICE IS WHETHER CONSUMERS USE THE SERVICE AS A REPLACEMENT TO THEIR EXISITING TELEPHONE SERVICE.

A. The Commission Drew the Regulatory Line at "Interconnected VOIP" Services Because It Found Such Services Could Serve as a Replacement for PSTN Service.

In its 2005 Order that first addressed emergency calling for IP-enabled services, the Commission limited its focus to services that functioned as replacements for PSTN connections. While ITI members do not necessarily agree with this reasoning, these comments focus on the issue of expanding the existing definition of "interconnected

VoIP" raised in the *Notice*. Providers of interconnected VoIP, defined by the Commission in Section 9.3 of its rules to include VoIP services that enable users to receive calls from *and* terminate calls to the PSTN, marketed their services as replacements for traditional wireline telephone services, and worked diligently with NENA to develop solutions that enabled their customers to receive E911 functionality. The Commission decided that such two-way interconnected VoIP services gave rise to a reasonable consumer expectation that a service that replaced their PSTN connection would have access to E911, and adopted emergency calling requirements accordingly.[3]

B. Extension of Emergency Calling Requirements Beyond the Existing Definition of "Interconnected VOIP" Would Upset Settled Consumer and Industry Expectations and Create Consumer Confusion.

The definition of "interconnected VoIP" adopted in Section 9.3 led to certainty for both consumers and the information technology industry, and led to continued innovation in IP-enabled voice applications and products both inside and outside the defined category. The IT industry has relied on the Commission's distinction between replacement and non-replacement services to innovate with new, non-interconnected IP-enabled voice applications. These non-interconnected IP-enabled voice products serve a variety of consumer needs, some of which have nothing at all to do with the PSTN and some of which simply enable limited interaction with the PSTN, *e.g.*, for low-cost international calling or click-to-call through various software portals to reach customer service and other PSTN end points. In many cases, though an IP-enabled application

[3] *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*; First Report and Order and Notice of Proposed Rulemaking; WC Docket Nos. 04-36 & 05-196, FCC 05-116, ¶ 23 (rel. June 3, 2005) (noting that consumers expect that interconnected VoIP services "function in some ways like a 'regular telephone' service.").

may include voice calling or PSTN connectivity as a feature, voice is not the primary feature of the application and no consumer would reasonably expect the application to have emergency calling capability.

Such IP-enabled voice applications and services do not give rise to reasonable consumer expectations regarding E911 calling since they are not replacements for "regular telephone" service. The key question the Commission asked when it first adopted the "interconnected VoIP" definition in 2005 is not whether the IP-enabled voice product interfaces with the PSTN in some way, but rather whether consumers reasonably expect to be able to dial 911 using the service. For example, some IP-enabled video- and voice-calling products are being integrated into Internet-enabled TVs — enabling video calls with distant relatives and friends — but consumers would not have a reasonable expectation that they would be able to reach a 911 operator using such a product.

In addition, IT companies have relied on the Commission's interconnected VoIP definition to structure their products to avoid the creation of emergency calling expectations on the part of consumers. As discussed below, many IP-enabled products that do not meet the existing interconnected VoIP definition provide clear disclaimers to consumers regarding the lack of emergency calling capability. Amending the definition to cover non-replacement services would create confusion and false expectations among consumers and would upset the settled expectations of both consumers and the IT industry that has developed these innovative IP-enabled voice products.

III. THE COMMISSION SHOULD NOT EXTEND E911 REQUIREMENTS TO ONE-WAY, OUTBOUND-ONLY VOIP

A. Consumers Have No Reasonable Expectation of Emergency Calling Using a One-Way VoIP Product.

In the *Notice*, the Commission seeks comment on whether to extend its 911 obligations to providers of outbound-only VoIP services, *i.e.*, services that are one-way interconnected and enable outbound calls to the PSTN.[4] However, outbound-only VoIP services are not replacements for "regular telephone" service and therefore do not meet the criteria set forth in the Commission's 2005 *Order* of generating a reasonable consumer expectation for emergency calling capability.[5] For this reason, and for the reasons discussed below, outbound-only VoIP services should not be subject to an emergency calling requirements.

The *Notice* simply lists a number of outbound-only VOIP services that are being used by consumers and businesses, but does not identify a reason for subjecting such services to an E911 requirement. There is no indication that consumers are using such services — which do not include callback capability — as replacements for PSTN service, or that they expect to be able to use such limited services for E911 calling rather than simply using their existing wireline or wireless phone service. As discussed above, in keeping with its precedent, the question the Commission should ask is not whether outbound-only VoIP products are being used by consumers or generating a particular amount of revenue, but whether they give rise to reasonable consumer expectations of emergency calling capability.

In fact, outbound-only VoIP products are used by consumers to complement

[4] *Notice*, ¶¶ 48-58.
[5] *See* note 3, *supra*.

rather than replace their PSTN or other primary voice calling service, and do not give rise to expectations of emergency calling. Consumers use outbound-only VoIP products for affordable long-distance and international calling or for the products' enhanced features such as conference calling rather than as a primary PSTN connection. Without a callback capability — *i.e.*, the ability to receive PSTN calls — consumers are aware that these outbound-only VoIP products are not substitutes for their wireline and wireless services. Indeed, though the *Notice* mentions that some providers of outbound-only VoIP allow users to associate a PSTN number for non-emergency callback purposes, this example only serves to underscore that users have a primary telephone service — with legitimate consumer expectations as to emergency calling capability — and that the outbound-only VoIP product is used as a complement to this primary service. In light of the above, it is no surprise that the *Notice* cites no evidence that consumers have a reasonable expectation of emergency calling capability for outbound-only VoIP.

It is also worth emphasizing that consumer expectations must be *reasonable* consumer expectations — regulators and industry cannot and should not cater to unreasonable expectations. Moreover, policymakers have to consider also what is actually feasible technically and financially before imposing E911 obligations on IP-based applications that have far different revenue models from traditional telephone carriers. With respect to technical feasibility, as noted above, outbound-only VoIP services are not technically capable of complying with the FCC's existing E911 rules because they lack, by definition, a callback capability as they have no phone number associated with them. Though the *Notice* mentions an option for SkypeOut users to associate a wireless number with their accounts for callback purposes, not all users use

this option. With respect to financial feasibility, unlike two-way interconnected VoIP services that replace PSTN services and for which consumers typically pay significant monthly subscription fees, outbound-only VoIP products typically do not have the same subscription service model or revenue stream.

Extending E911 requirements to outbound-only VoIP products would create confusion among consumers and runs the risk of creating a situation in which consumers fail to use the most effective service to reach emergency services when they have a choice of voice offerings — *i.e.*, their wireline or wireless telephone service. Moreover, rather than saddling innovative IP-enabled services with unnecessary legacy regulations, the better policy approach would be to manage consumer expectations by requiring disclaimers where appropriate — after all, consumer expectations do not develop in a vacuum and are shaped by regulatory actions and, of course, the design, marketing, and distribution of the VoIP products themselves. Outbound-only VOIP products such as SkypeOut include clear disclaimers regarding their lack of E911 capability.[6] In this regard, ITI agrees with the public safety entities who argue that providers of non-interconnected VOIP services should work diligently to provide necessary disclaimers to minimize any consumer confusion.[7]

[6] The SkypeOut page includes the following disclaimer: "No emergency calls with Skype. Skype is not a replacement for your telephone and can't be used for emergency calling." The same disclaimer is displayed prominently on the Skype homepage and throughout Skype's website.

[7] *Notice*, ¶ 42 (citing Comments filed by Texas 9-1-1 Agencies arguing that "vendors of [non-interconnected VoIP] services should be required to provide public education materials related to 9-1-1 limitations and work diligently with public safety and access network provider[s] . . . to minimize confusion . . . .").

B. The Costs of Extending the Commission's Emergency Calling Requirements to Outbound-Only and Other Non-Interconnected VoIP Far Outweigh Any Benefits.

In the *Notice*, the Commission seeks comment on the costs and benefits of extending 911 service requirements to outbound-only VoIP services.[8] As discussed below, the costs of extending the Commission's rules to services outside the existing interconnected VoIP definitions far outweigh any benefits.

The significant costs of requiring outbound-only VoIP to provide emergency calling capability include:

Finding a technical solution: As noted above and in the *Notice*, outbound-only VoIP services cannot technically comply with existing 911 requirements because they lack a callback number. Though the *Notice* cites callback mechanisms that have been implemented by outbound-only products such as SkypeOut, the reality is that such optional, non-emergency solutions are far from reliable enough to be used for something as important as emergency calling and by public safety first responders. For example, SkypeOut is commonly used on home (laptop or desktop) computers, most commonly to make long distance/international calls to family and friends in addition to Skype-to-Skype voice and video calls that do not touch the PSTN. Calls may be made from a shared home computer, while a callback wireless number may be used by a different household member than the person placing the Skype call. Conversely, if a home landline number is used as the callback number by the Skype user, this number will be useless if an emergency call were placed from a laptop computer being used at a coffee shop or other Wi-Fi hotspot. The better outcome from a regulatory standpoint is to maintain the current rules which encourage users to rely on their primary voice calling

[8] *Notice*, ¶¶ 52-58.

service — wireline or wireless, whichever is appropriate given the situation in which the user finds him or herself when placing a 911 call.

It should also be noted that most outbound-only VoIP products are inherently more nomadic than most interconnected VoIP services designed as replacement telephone services. This in turn raises questions about the usefulness of the location information, particularly given the infeasibility of generating automatic location information for such nomadic VoIP users described elsewhere in these comments.

Consumer confusion: Adopting a 911 requirement for outbound-only VoIP would lead to real consumer confusion arising from non-replacement telephone services having E911 capability and consumer awareness of the distinctions between IP-enabled voice products that have 911 capability and those that do not. Moreover, given the limited capability of outbound-only VoIP regarding callback capability and ALI, there are real risks associated with encouraging users to place emergency calls using such services rather than relying on their primary voice services.

Increased cost to public safety: PSAPs will need to be upgraded to handle emergency calls from a variety of new IP-enabled voice products with varying ALI/location capabilities. Funds for such upgrades will be hard to come by given the challenging economic climate, particularly with respect to federal, state, and local budgets. This in turn will lead to variation in 911 calling capability across the country if some PSAPs are upgraded and others are not, a more confusing scenario for VoIP products that are inherently more nomadic and likely to be used in different jurisdictions on different networks.

Costs to IP-Enabled Voice Products, Harm to Innovation and Potential Market Exit: As discussed above, most non-interconnected VoIP products, including outbound-only VoIP products, use very different business models than traditional telephone services and providers of interconnected VoIP. While the latter typically charge subscribers significant monthly fees and have a more traditional subscriber/service provider model, providers of innovative non-interconnected VoIP products typically generate comparatively very small amounts from episodic use of paid services by users of their software applications. Because of this, compliance costs that would seem small for the more traditional telephone or replacement telephone service provider would be significant and perhaps impossible for providers of outbound-only VoIP and other IP-enabled voice products that do not fall within the existing interconnected VoIP definition.

Accordingly, imposing burdensome regulatory compliance costs on outbound-only or other non-interconnected VoIP products runs the serious risk of harming innovation in IP-enabled voice applications. As discussed above, such applications are not designed to be replacement telephone services but instead to meet a variety of complementary consumer needs. It is also quite conceivable that, if faced with large compliance costs associated with a new 911 calling requirement, some IP-enabled products would simply exit the market in the United States.

Diversion of Resources: As discussed below in Section VI, requiring E911 compliance for IP-enabled products that do not meet the existing definition of interconnected VoIP will divert resources away from the development and deployment of NG911 solutions and an NG911 network.

Finally, it should be noted that given the small number of users of outbound-only

VoIP products, the lack of consumer expectations regarding 911 calling capability for non-replacement telephone services such as outbound-only VoIP, and the presence of primary voice calling options (wireline and wireless) with existing emergency calling capability, any benefits of extending the Commission's 911 calling rules to outbound-only VoIP would appear to be miniscule.

IV. SHOULD THE FCC NONETHELESS EXTEND E911 CALLING OBLIGATIONS TO OUTBOUND-ONLY VOIP, THE FCC SHOULD NOT AMEND THE DEFINITION OF "INTERCONNECTED VOIP" TO ACCOMPLISH ITS GOAL.

As discussed above, the *Notice* fails to articulate a justification for amending the existing definition of "interconnected VoIP."[9] Moreover, contrary to suggestions in the *Notice*, Congress has not suggested or encouraged the amendment of this definition. The NET 911 Improvement Act did not alter the Commission's definition of "interconnected VOIP," nor did it encourage changing the definition of "interconnected VOIP." Instead, by defining "IP-enabled voice service" as having the same meaning as the existing definition of "interconnected VoIP" in Section 9.3 of the Commission's rules, the NET 911 Improvement Act simply reaffirmed the Commission's decision to limit regulation of IP-based voice software and applications.[10] The legislative history cited in the *Notice* served only to ensure that the Commission has the flexibility to continue to impose E911 requirements on "interconnected VoIP" services in the event that the "interconnected VoIP" definition was ever amended, but did not provide independent encouragement or authority to amend the definition.

[9] As noted above, ITI members do not necessarily agree with the existing definition of interconnected VoIP and the various regulations that providers of such services have been subject to.

[10] 47 U.S.C. § 615a(i).

As discussed above, ITI opposes amending the existing definition of interconnected VoIP to outbound-only VoIP or other IP-enabled voice products. Outbound-only VoIP services do not replace "regular telephone" service; instead, such services are used by consumers on a more episodic, complementary basis. Expanding the emergency calling obligation to a specific form of VoIP services that do not replace telephone service alters the very basis for the definition and for the Commission's 2005 decision to apply 911 obligations to providers of interconnected VoIP.

Nevertheless, should the Commission disagree and decide to subject outbound-only VoIP to emergency calling requirements, amending the definition of interconnected VoIP is not necessary to achieve the Commission's objective in this proceeding. To the extent the Commission concludes there are non-interconnected VoIP services that should be subject to emergency calling obligations, it should create a narrow definition and apply such obligations to the newly captured class of services while preserving the existing "interconected VoIP" definition without amendment. To do otherwise risks a number of unintended consequences, given that the existing "interconnected VoIP" definition in Section 9.3 also helps define a number of other regulatory obligations for VoIP providers, including USF payment obligations, disabilities access requirements, customer privacy/CPNI requirements, CALEA obligations, payments to the TRS fund, etc.

Redefining "interconnected VoIP" could extend a number of these regulatory obligations to providers of IP-enabled voice services that are not regulated today. To the extent the Commission decides that any such regulatory obligations are necessary, it must develop a record with respect to each and every regulatory obligation it would propose to

apply. A proceeding focused on E911 capabilities only is not the appropriate forum to consider whether other, unrelated regulatory obligations should apply to products and services that fall outside the existing interconnected VoIP definition. The consequences of applying additional obligations to IP-enabled voice products and services — *e.g.*, stifling innovation and potential market exit as described above — are far too serious for the Commission to take such a step as an afterthought in an E911 proceeding.

V. THE FCC SHOULD NOT EXTEND AUTOMATIC LOCATION INFORMATION REQUIREMENTS TO NOMADIC VOIP APPLICATIONS AS LONG AS TECHNICAL AND OPERATIONAL OBSTACLES REMAIN TO PROVIDING ALI FOR SUCH APPLICATIONS.

The *Notice* discusses the extension of automatic location information ("ALI") requirements for interconnected VoIP providers, which at present apply to providers of fixed interconnected VoIP only and not to providers of portable interconnected VoIP services, including nomadic and mobile VoIP.[11] To its credit, the Commission notes that all parties "generally agree that at this time there is no technological or cost-effective means to provide ALI for interconnected VoIP service providers."[12] Accordingly, given the lack of presently available solutions, the Commission wisely decided not to propose adopting specific ALI requirements for interconnected VoIP services.[13]

Technology companies, including ITI members, have worked with public safety representatives and others in developing the I3 standard that allows PSAPs to receive IP-based signaling and information. However, this standard falls well short of what would be needed to implement ALI for nomadic VoIP applications and services. ITI agrees

[11] *Notice*, Section IV.B, ¶¶ 59-75.
[12] *Notice*, ¶ 64.
[13] *Notice*, ¶ 70.

with the numerous commenting parties cited in the *Notice* who discuss the significant difficulties in implementing an ALI solution for interconnected VoIP providers.[14] Unlike traditional telephone service with relatively standardized equipment and interfaces, services that are encompassed within the existing interconnected VoIP definition operate on a variety of portable devices and access networks, making it infeasible to develop a single ALI standard or requirement.[15] Moreover, even as commercial location-based applications continue to be developed, these applications have been designed for commercial services such as locating the nearest movie theater or coffee shop and have not been designed with the precision or reliability necessary to locate a caller in an emergency situation. Given these challenges, it would be premature to adopt ALI requirements for nomadic or mobile VoIP applications given that such capability does not exist today.[16]

In addition to the technical challenges described above, even if portable VoIP providers were able to implement an ALI solution, Public Safety Answering Points (PSAPs) are not close to being ready to receive ALI information from VoIP providers. Moreover, funding concerns for PSAP upgrades have been exacerbated given the financial downturn and the struggles that most states are facing with their budgets. Given these realities, it would be unwise to develop federal mandates before the state and local PSAPs and emergency response infrastructure is upgraded.

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[14] *Notice*, ¶¶ 64-68.
[15] *Notice* at ¶ 64 (citing Comments filed by AT&T).
[16] Note that the discussion of the technical challenges to providing an ALI solution for portable VoIP providers applies to interconnected VoIP as defined today. As discussed elsewhere in these comments, ITI opposes expanding the definition of interconnected VoIP so as to apply emergency calling requirements to IP-based services and applications that do not meet the current definition of interconnected VoIP and that do not serve as replacement telephone services.

Though the Commission wisely chose not to propose an ALI requirement given the significant challenges described herein, ITI is concerned that even the suggested "governing principles" would simply cause confusion among consumers as to what E911 capabilities are available and confusion among industry as to what its obligations are. On one hand, vaguely defined governing principles would accomplish little and could create premature consumer expectations as to ALI capabilities, while on the other hand more detailed principles are premature and could forestall the development of the most efficient and effective ALI solution. Instead of adopting governing principles, the Commission, via CSRIC, should continue to encourage stakeholders to collaborate toward developing a feasible and effective ALI solution, as well as migration to a NG911 network. Once technically and economically feasible ALI solutions have been identified and developed, the Commission can oversee the implementation of appropriate ALI solutions for portable interconnected VoIP providers.

VI. THE FCC SHOULD FOCUS ON NEXT GEN 911 CAPABILITY RATHER THAN REQUIRING IP-BASED SOFTWARE APPLICATIONS TO COMPLY WITH LEGACY EMERGENCY CALLING RULES.

In recent months, the Commission has been focused on the deployment of a Next Generation 911 network. After releasing a *Notice of Inquiry* on NG911 and receiving comments on a variety of issues relating to upgrading the nation's emergency calling network to technologies beyond traditional PSTN voice-centric devices,[17] the Commission recently released a *Notice of Proposed Rulemaking* addressing a number of

[17] *Framework for Next Generation 911 Deployment*, Notice of Inquiry, PS Docket No. 10-255, 25 FCC Rcd 17869 (2010).

technical, legal, and economic issues relating to NG911 development and deployment.[18] The Commission is right to focus on developing a NG911 system that leverages the enhanced capabilities of IP-based networks to deliver more effective emergency calling and greater functionality for public safety responders. However, the Commission's NG911 proceedings illustrate the technical, regulatory, and economic challenges ahead and the amount of work to be done.

The Commission should continue to work toward a NG911 network rather than diverting time, energy, and resources toward requiring IP-based providers to comply with legacy rules and adapt to a legacy E911 infrastructure. The reality is that the Commission and the various stakeholders — from state and local public safety entities to network operators to technology companies — have limited resources to devote to developing and implementing NG911 solutions. If the Commission's rules require ITI members to devote resources to interfacing with the legacy E911 network for a variety of IP-based services and applications beyond interconnected VoIP services as presently defined, it will detract from the resources available to work toward an effective NG911 network — particularly in the challenging economic climate and competitive global marketplace that ITI member companies face today. ITI's members — whose expertise is geared toward an NG911 network than the legacy, narrowband E911 network — stand ready to work with the FCC and other stakeholders to develop NG911 standards that are realistic, feasible, and effective.

* * *

[18] *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, Notice of Proposed Rulemaking, PS Docket Nos. 11-153 & 10-255, FCC 11-134 (rel. Sep. 22, 2011); *see also id.*, ¶¶ 14-21 (discussing the procedural history of the NG911 proceeding and NG911-related efforts by various government agencies and public safety-related entities).

Respectfully submitted,

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